

November 21, 2011

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 11-42 - Lifeline and Link Up Reform and Modernization
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

This letter is submitted on behalf of TracFone Wireless, Inc. ("TracFone") to summarize a recent discussion with Kimberly Scardino of the Telecommunications Access Policy Division of the Wireline Competition Bureau, and to respond to an ex parte presentation submitted by the Link Up for America Coalition ("Coalition") on November 14, 2011 (November 14 letter).

On November 15, 2011, undersigned counsel spoke with Ms. Scardino about the geographic scope of TracFone's coverage areas in states where TracFone has been designated as an Eligible Telecommunications Carrier (ETC) and where it provides Lifeline-supported service. Currently, TracFone has been designated as an ETC in 38 states (on November 15, a hearing examiner in New Mexico issued a recommended decision which, when adopted by the New Mexico Public Regulation Commission would make New Mexico the 39th state to have designated TracFone as an ETC). TracFone's SafeLink Wireless[®] Lifeline service is available in 36 states. In most of those states, TracFone has been designated to serve all areas of the state in which its underlying carriers have coverage. Several states have limited TracFone's ETC service area portions of the state served by rural telephone companies to those areas where TracFone is able to serve the entire study areas of the rural telephone companies. To date, only the Kansas Corporation Commission and Indiana Utility Regulatory Commission have imposed that limitation. In such study areas, Lifeline service is available from the rural telephone company. In addition, since Sprint's wireless network serves many such study areas, Sprint's Assurance Wireless lifeline service is available in those states where Sprint/Virgin Mobile has been designated as an ETC. In fact, since TracFone utilizes the underlying networks of three major wireless carriers -- AT&T Mobility, Verizon Wireless, and T-Mobile -- to provide Lifeline service, the only areas in those states where TracFone's Lifeline service is not available are areas where neither AT&T Mobility, Verizon Wireless or T-Mobile have coverage. In such areas, it is unlikely that any other wireless ETCs, including those who are members of the Link Up for America Coalition, are able to provide Lifeline service. TracFone's SafeLink Wireless[®] is available in all study areas where AT&T, Verizon or T-Mobile have coverage. Assurance

Wireless is available wherever Sprint has coverage. Any ETC offering wireless Lifeline service in an area where none of those four underlying carriers have coverage would have to obtain service from another vendor.

TracFone has explained in prior filings why the Commission's rules explicitly limit Link Up support to reductions in ETCs' "customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence" (47 C.F.R. § 54.411(a)). It has also explained why Link Up support is not intended to subsidize carriers' marketing and advertising (even if it is labeled "outreach"), regulatory compliance or other normal costs of doing business. It has discussed how payment of Link Up support to ETCs not entitled to such support is costing the Universal Service Fund more than \$68 million per year (an amount that is likely to grow in future years unless the Commission acts to curb this abuse of USF resources). Several assertions in the Coalition's latest filing warrant further response.

At the outset, there is no need to divert millions of dollars a year from the USF to provide Link Up subsidies (especially to wireless resellers) to provide service to low income households. The Coalition asserts that Link Up support is somehow necessary to enable ETCs to initiate wireless services to low income consumers. That statement is unsupported and is facially false. Today, low income consumers throughout the nation are able to obtain wireless service from TracFone and from Assurance Wireless without either of those ETCs receiving Link Up subsidies to serve those customers. TracFone provides Lifeline service to more than 3.8 million consumers. Assurance Wireless is reported to have around 2 million Lifeline customers. The availability of wireless service from these providers who do not receive Link Up support belies the assertion that low income consumers are unable to obtain wireless Lifeline service unless Coalition members receive Link Up subsidies.

The Coalition continues to describe Link Up as "revenue replacement mechanism." (See, e.g., November 14 letter at 1). Nothing in the Commission's Link Up rules states or implies that Link Up support is to replace lost revenues. Moreover, the very concept of a revenue replacement mechanism implies that carriers somehow have an entitlement to receipt of certain revenues and a related entitlement to receive those revenues from other sources -- such as the Universal Service Fund -- if they do not receive those revenues directly from consumers. The concept of revenue replacement is a vestige of rate of return regulation. Regulated utilities have rates approved by government regulators and may recover those approved rates either from consumers or from other sources. Commercial Mobile Radio Service rates are not subject to rate regulation. Since CMRS providers are not entitled to a guaranteed return on their investments, suggesting that Link Up is a "revenue replacement mechanism" is a misnomer.

Indeed, the Coalition's assertion that Link Up is a revenue replacement mechanism is internally consistent with other portions of its positions as expressed elsewhere in the same November 14 letter. For example, the Coalition claims both that its members are entitled to Link Up subsidies as a revenue replacement mechanism, and to recover their costs of service. At p. 3 of the PowerPoint presentation submitted with its letter, the Coalition states that Link Up is not a cost reimbursement program. Yet two pages later in the same presentation, the Coalition contradicts that statement, saying that "costs matter." In fact, in the letter itself, the Coalition

provides, albeit on a redacted basis, alleged costs incurred by its members for commencing service (see November 14 letter at p. 1-2, n. 2). If the Coalition is claiming that its "costs" justify receipt of Link Up subsidies from a publicly-supported fund, then the public which provides those funds to the USF has every right to know those costs. Other ETCs who receive USF funding to offset their costs have their funding based on publicly available cost information, not on secret cost data shared with Commission personnel but hidden from the public, including those members of the public who provide the USF contributions from which the Coalition members' Link Up subsidies are provided. Recipients of high cost support have their high cost payments determined based on publicly available cost information. Yet the Coalition somehow believes that it is entitled to have its costs covered by the USF without making those costs publicly known. This "take our word for it" approach to assertions about costs to be subsidized is inconsistent with accountability for the disbursement of USF resources and with prudent stewardship of the USF.

Among the "costs" which the Coalition claims justify its members' receipt of Link Up subsidies is underlying carriers' activation fees. Nowhere has the Coalition provided any documentation as to which of its members -- if any -- are charged activation fees and how much -- if anything -- those members pay in activation fees. TracFone is the nation's largest mobile virtual network operator (MVNO). **Never in its history (it commenced service in 1996) has TracFone ever been assessed an activation fee by any underlying carrier.** In fact, TracFone has never heard of any underlying carrier ever requiring wholesale customers to pay activation fees. As noted above, TracFone's underlying carriers include three of the four largest CMRS network operators in the nation -- AT&T Mobility, Verizon Wireless, and T-Mobile. The fourth is Sprint, which owns Virgin Mobile (provider of Assurance Wireless). TracFone is not aware of Sprint imposing activation fees either on its own Virgin Mobile or on any of its other resale customers.

The Coalition's claims regarding activation fees charged to consumers by other wireless providers are especially curious. The Coalition states that "the general industry practice is to charge activation fees to initiate service to new customers." (November 14 letter at 3). With particular respect to wireless Lifeline service, activation fees most definitely are **not** the standard industry practice. TracFone and Virgin Mobile are by far the largest wireless Lifeline providers, serving more than 5 million customers between them. No Lifeline customer of either company ever has been charged an activation fee, notwithstanding the unsupported and unsupportable Coalition claim that such activation fees are "general industry practice."

Astonishingly, the Coalition indicates that two of its members -- Global Connect and Telrite -- impose activation fees of \$60 (November 14 letter at 3). However, the Coalition then lists the activation fees for seven other wireless carriers. Those activation fees range from a high of \$36 (AT&T Mobility and Sprint) to a low of \$35 (Verizon Wireless, T-Mobile, SouthernLINC, Cincinnati Bell, Qwest Wireless). Nowhere does the Coalition offer any explanation as to why its two members' activation fees are nearly double those charged by every other wireless carrier identified by the Coalition as having an activation fee. Neither does the Coalition indicate whether any of those seven named carriers impose activation fees on Lifeline

customers. Not one of those carriers charges Lifeline customers activation fees. Apparently, only the Coalition members and a handful of minor carriers with similar strategies have the temerity to subject Lifeline customers to activation fees and even the greater temerity to ask the USF -- and those who fund the USF -- to subsidize those activation fees.

Those wireless carriers who impose activation fees do not do so to cover their costs of connecting customers to their networks at the customers' principal places of residence (47 C.F.R. § 54.411(a)). They charge activation fees for one -- and only one -- reason: because they believe that the market will allow them to do so. If a wireless carrier concludes that there is sufficient consumer demand for its service to require consumers' to pay activation fees that is the carrier's prerogative. If consumers are unwilling to pay \$60 to activate service on Telrite or Global Connections, they can activate service on AT&T, Verizon, Sprint, or any of the other named carriers for \$35 or \$36. If they do not want to pay any activation fees, they can obtain service from companies that do not charge activation fees such as TracFone. (For the record, TracFone has never imposed activation charges on any consumers, including its non-Lifeline customers). The fact that a wireless carrier chooses to extract activation fees from consumers based upon that carrier's perception of market demand for its service does not entitle it to have those fees subsidized by the USF.

The Coalition continues to assert the wholly untenable position that a fee may be "customary" even if it is routinely not paid (*i.e.*, waived). Not only is there no legal or policy basis for such a proposition, it stands the English language on its head. A standard English language definition of "customary" is "commonly practiced; usual." (Webster's II New Riverside University Dictionary, Houghton Mifflin Company, copyright 1984, at 340). If a charge is not routinely paid then it is not commonly practiced and is certainly not usual. Next the Coalition makes the rather unusual argument that if wireless carriers can waive activation charges for affluent customers, then Coalition members should be able to waive activation charges for low income customers (November 14 letter at 5). Of course, Coalition members may waive activation charges for any customers -- high income, low income or otherwise. Often, waiving activation charges is a sensible business strategy. Companies sacrifice short-term revenue (the activation charge revenue) in the expectation of garnering long-term revenue (ongoing service revenues from consumers). The fact that they may waive those charges and may elect to do so for promotional or other strategic purposes does not mean that they should have the nation's telecommunications carriers and ultimately all consumers subsidize those waived charges.

In this regard, the Coalition's claim that a waived charge can somehow be a "customary" charge even if most consumers do not pay it is a flashback to the early days of cable television. In order to induce consumers who previously received television signals over the air free of charge to pay for television service, cable operators would advertise that if the customer "acted now" the company would waive its normal activation charge. Of course, all customers "acted now" (since "now" was whenever the cable operator chose it to be) and no customers ever paid the cable companies' customary, through never actually imposed, activation charges. Unlike the Coalition members, those cable companies who "waived" their "customary" activation charges

for customers who “acted now,” did not seek to have the waived charges subsidized by a federal fund intended in part to support affordable telecommunications service for low-income consumers.

The issues before the Commission include whether the rules as currently enacted allow for wireless reseller ETCs to receive Link Up support in the manner in which they have been receiving it, and whether the Commission should continue to allow such ETCs to receive Link Up support in light of the Commission’s articulated commitment to limiting growth of the low-income program and to preventing waste, fraud and abuse of USF resources. This proceeding is not about the operations and business strategies of any specific companies. However, the Coalition’s reference to TracFone’s “cream skimming model” as having “limited reach and appeal.” (PowerPoint presentation at 11) is pejorative, insulting and factually wrong. TracFone provides Lifeline service in 36 states. Its service is available anywhere in those states where it has wireless coverage through any of its underlying carriers (subject to the state-imposed limitations in Kansas and Indiana described in the second paragraph of this letter). It currently has more than 3.8 million enrolled low-income Lifeline customers -- more than any other Lifeline provider -- wireless or wireline -- in the United States. Not one of those 3.8 million customers was assessed an activation charge and TracFone has not asked for or received a dime of Link Up support in order to obtain those customers and activate them in TracFone’s system. That unprecedented growth did not occur by magic, and it certainly is not the result of cream skimming and offering a program with limited reach and appeal. That growth is the result of aggressive media advertising and on-the-ground marketing efforts. Whether called marketing, advertising, outreach, or anything else, TracFone deploys teams into low income areas throughout those 36 states, educates consumers about Lifeline and about its SafeLink Wireless[®] program, instructs consumers in handset usage, enrolls customers -- just as the Coalition members purport to do. That aggressive strategy is not cream skimming.

Finally, the Coalition continues to use the oxymoronic label “facilities-based resellers” to describe its members (November 14 letter at 5). Nowhere is there any description of what company-owned facilities are used by those companies to provide services supported by the universal service support mechanisms in the states where they offer wireless Lifeline service. TracFone addressed this issue in its ex parte letter filed in this proceeding dated November 15. Rather than repeat that discussion, it is hereby incorporated by reference.

As TracFone has explained in numerous prior submissions in this proceeding, it shares the Commission’s concern about efficient use of USF resources and the need for responsible reforms to enable detection and prevention of waste, fraud, and abuse of USF resources. The record established in this proceeding abundantly demonstrates that: 1) Link Up support for wireless ETCs is not necessary to provide Lifeline service to qualified low income consumers; 2) that the Commission’s current rules do not allow for Link Up subsidies for any purpose other than to offset reductions in ETCs’ customary charges for commencing telecommunications service for a single telecommunications connection at a consumer’s principal place of residence; 3) many millions of dollars of USF funding could be saved by limiting Link Up support to its

intended purpose; and 4) and that such limitations would be an important step in preventing waste, fraud, and abuse of USF resources.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mitchell F. Brecher", with a long horizontal flourish extending to the right.

Mitchell F. Brecher

cc: Ms. Kimberly Scardino